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International cooperation in tax matters

Role and work of the Committee of Experts on International Cooperation in Tax Matters

Report of the Secretary-General

Summary

Submitted pursuant to Economic and Social Council resolution 2011/23, the present report examines the role and work of the Committee of Experts in promoting international cooperation in tax matters, including further options to strengthen its work and its cooperation with concerned multilateral bodies and relevant regional and subregional organizations. It identifies deficiencies and gaps in international tax cooperation and suggests possible ways for the Committee and the United Nations to contribute to addressing them. The report analyses strengths and weaknesses in the current working methods of the Committee and provides recommendations on how to further enhance these strengths and effectively address the weaknesses. It also explores opportunities for creating greater synergies between United Nations policy development and capacity-building work and that of other international organizations and multilateral bodies.

The present report should be read in conjunction with the report of the Secretary-General on strengthening of institutional arrangements to promote international cooperation in tax matters (E/2011/76).

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I. Background

1. The Economic and Social Council, in its resolution 2011/23 on the Committee of Experts on International Cooperation in Tax Matters, requested the Secretary-General to submit to the Council a report on the role and work of the Committee in promoting international cooperation in tax matters, including further options to strengthen the work of the Committee and its cooperation with concerned multilateral bodies and relevant regional and subregional organizations. By the same resolution, the Council also decided to hold a one-day meeting in 2012 in conjunction with the special high-level meeting of the Council with the Bretton Woods institutions, the World Trade Organization and the United Nations Conference on Trade and Development to consider international cooperation in tax matters, including institutional arrangements to promote such cooperation. The present report has been prepared in response to those requests.

2. The following modalities were utilized in preparation of the present report: (a) consultation with members of the Committee of Experts on International Cooperation in Tax Matters using a questionnaire; (b) consultation with international organizations; and (c) a background paper prepared by Professor Victor van Kommer of the International Bureau of Fiscal Documentation, who was hired as a consultant by the United Nations. The inputs received are not summarized separately owing to space constraints but are reflected in the analysis of the report. Relevant views that were received at an earlier point by the secretariat as part of its ongoing support to the Committee, including from civil society, have also been taken into account. The questionnaire provided to Committee members, responses from the international organizations, that have agreed to posting their inputs, and the report of the consultant, are available on the Committee's website.[1]

3. The adoption of resolution 2011/23 followed intense discussion within the Economic and Social Council of the report of the Secretary-General on strengthening of institutional arrangements to promote international cooperation in tax matters[2] (the 2011 report of the Secretary-General). The report reviewed existing institutional arrangements, including complementarities between the work of the Committee and other international organizations active in the area of international tax cooperation and drew upon the views of the Member States. In its analysis, the report presented three options for the Council to strengthen the Organization's institutional capacity to promote international tax cooperation: (a) strengthening existing arrangements within the United Nations while retaining the current format of the Committee of Experts; (b) converting the Committee into an intergovernmental commission serving as a subsidiary body of the Council; and (c) creating an intergovernmental commission while retaining the Committee as its subsidiary body.

4. The report demonstrated that under all of the three scenarios, irrespective of whether a conversion was proposed, additional resources would be needed if institutional arrangements to promote international cooperation in tax matters were to be strengthened. It also expressed the view that ensuring that the United Nations plays its proper role in international tax cooperation in terms of its institutional

[1] See http://www.un.org/esa/ffd/tax/.

[2] E/2011/76.

capacity would be a significant contribution by the Economic and Social Council to enhancing domestic resource mobilization for development, while responding to an urgent need for greater cooperation on tax matters in the common pursuit of the achievement of the Millennium Development Goals by 2015.

II. The role of international tax cooperation in financing for development

5. Over the past decade, the relationship between the mobilization of financial resources for development and international tax cooperation featured prominently in outcome documents of major United Nations conferences and summits on economic and social matters, including the 2002 Monterrey Consensus of the International Conference on Financing for Development,[3] the 2008 Doha Declaration on Financing for Development,[4] the Outcome of the 2009 Conference on the World Financial and Economic Crisis and Its Impact on Development[5] and the outcome document of the High-level Plenary Meeting of the sixty-fifth session of the General Assembly on the Millennium Development Goals.[6]

6. Similar concerns were expressed in the 2011 report to the Development Working Group of the Group of 20, entitled "Supporting the Development of More Effective Tax Systems",[7] jointly prepared by the secretariats of the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), the United Nations and the World Bank, in consultation with the African Tax Administration Forum and the Inter-American Centre of Tax Administrations.

7. The report of the Group of 20 addressed how the Group could contribute to strengthening the enabling environment in which tax systems can be made as effective as possible in assisting development, including by supporting ongoing initiatives of international and other organizations active in tax-related activities. The report recommended that member countries of the Group:

(a) Analyse spillover effects on developing countries of major changes in their tax systems, and support the efforts of such countries to counter tax avoidance and evasion;

(b) Share their efforts to improve tax expenditure analysis, request international organizations to develop a framework for assessing special tax treatments and develop guidance for countries using tax incentives to attract foreign direct investment;

(c) Make transparent their exemptions on goods and services funded by official development assistance, and encourage other donors to follow suit;

(d) Link tax and expenditure in their assistance programmes;

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[3] *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex, paras. 15 and 64.

[4] General Assembly resolution 63/239, annex, paras. 16 and 25.

[5] General Assembly resolution 63/303, annex.

[6] General Assembly resolution 65/1, para. 78 (i).

[7] Available from http://www.un.org/esa/ffd/tax/IOReport.pdf.

(e) Promote the Multilateral Convention on Administrative Assistance in Tax Matters, support spontaneous exchange of information in international tax fraud cases and include anti-treaty shopping provisions in treaties between member countries of the G-20 and developing countries;

(f) Request international organizations to advise leaders of the Group of 20 on how to improve transparency in the operations of multinational enterprises in developing countries, taking into account the current debate on country-by-country reporting;

(g) Strongly encourage multinational enterprises to provide the relevant and necessary information to the developing countries in which they operate;

(h) Urge international organizations and other donors to strengthen their programmes to assist developing countries to effectively implement transfer pricing rules;

(i) Encourage international organizations to map assistance programmes, improve the reporting on those programmes, and develop knowledge management platforms;

(j) Share their benchmarking of performance and structure of their tax administrations, support international organizations and regional organizations, for example the African Tax Administration Forun in benchmarking tax administrations and developing core indicators to monitor and assess capacity improvement in tax administration and other revenue-related areas;

(k) Urge international and regional organizations to improve the quality and consistency of statistics on the tax systems of developing countries.

8. While written in response to a specific request from the Group of 20, the report has wider relevance in its emphasis on opportunities to work together to more effectively assist developing countries in improving their tax systems with a view to achieving sustainable development. In that respect it can be considered an example of successful cooperation at a secretariat level in the area of international taxation, drawing upon the strengths and special insights of all relevant participating organizations. The United Nations Secretariat contributed actively to the report, and the present report draws upon it extensively.

III. Collaboration between and complementarities in the work of the United Nations and other multilateral bodies

9. The overview of the existing institutional arrangements for international cooperation in tax matters is provided in the 2011 report of the Secretary-General.[2] The activities of the multilateral entities in the area of international taxation are surveyed in the consultant's report and the report of the Group of 20, as well as in a paper prepared for the 2010 annual session of the Committee,[8] and thus need not be repeated here.

[8] Michielse, Geerten and Thuronyi, Victor, "Overview of cooperation on capacity-building on taxation", report prepared for the sixth session of the Committee of Experts on International Cooperation in Tax Matters (E/C.18/2010/CRP.11, available from http://www.un.org/esa/ffd/tax/sixthsession/OverviewCapacityBldg.pdf).

10. As noted in the report of the Group of 20,[9] the existing studies of activities conducted by international organizations in the areas of taxation are static, and efforts are under way to develop a more dynamic database of activities under the framework of the International Tax Dialogue. The Dialogue, a collaborative arrangement involving the European Commission, the Inter-American Development Bank, IMF, OECD, the World Bank Group and the Inter-American Centre of Tax Administrations, has been designed to facilitate the discussion of tax matters.

11. As mentioned in the 2011 report of the Secretary-General, while there is no question about overlap of the work programme of the Committee with those of IMF and the World Bank, the role of which is not essentially one of multilateral tax cooperation, the question is often raised about possible duplication between the work done at the United Nations and OECD.

12. While many provisions of the United Nations Model Tax Convention and the OECD Model Tax Convention overlap, they diverge in many important areas, clearly reflecting the different memberships and priorities of the two organizations. Such differences relate, in particular, to the issue of to what extent a country should forego, under a bilateral tax treaty, taxing rights that are available to it under domestic law, with a view to avoiding double taxation and encouraging investment. The United Nations Model generally preserves a greater share of tax revenue to the country where investment or other activity takes place, while the OECD Model preserves more taxing rights to the country of the investor, trader, etc. Thus, the United Nations Model Convention would normally allow developing countries more taxing rights on income generated by foreign investments in those countries.

13. The United Nations Model is heavily relied on by developing countries in tax treaty negotiations, and is expected to be even more widely used in the form of its 2011 update. By drawing upon OECD work where it is relevant to developing countries, the United Nations Model Tax Convention gives greater profile and significance to that work, but by explaining possible alternatives it helps countries decide which approach better suits their circumstances and priorities when negotiating bilateral treaties.

14. Likewise, the United Nations work in the area of practical guidance in transfer pricing, including the Practical Manual on Transfer Pricing for Developing Country, which is expected to be finalized this year, has attracted great interest. While consistent with the OECD Transfer Pricing Guidelines, it provides a novel and needs-based approach to explaining what those guidelines mean for developing countries, and how they can be applied in a way that responds to their priorities and realities. The work of the United Nations in this area has helped spur further work by others along similar but complementary lines.

15. The 193-country United Nations membership and the various perspectives, realities and priorities reflected in such a broad membership, as compared with organizations with smaller memberships, is widely recognized as an important complement to, and input to, the work of other forums. There is also increasing recognition in many such forums, and in civil society and the business community, of United Nations work on tax matters. For these reasons, the United Nations Secretariat is often asked to participate in the work, inter alia, of the Group of 20, the OECD Global Forum on Exchange of Information for Tax Purposes, the OECD

[9] See http://www.un.org/esa/ffd/tax/IOReport.pdf, pp. 45 and 46.

Informal Task Force on Tax and Development, the German Government's International Tax Compact and the training courses of the Asian Development Bank Institute. It seeks to do so within the limited resources available and where it furthers the objectives of the United Nations in this area. As noted above, the United Nations Secretariat has contributed actively to the taxation aspects of the Multi-Year Action Plan on Development of the Group of 20, along with the World Bank, IMF, OECD and others, and there have been some discussions about its more active involvement in the International Tax Dialogue. The Secretariat also seeks to make itself available to business and civil society interests to discuss the United Nations tax work and how these constituencies can effectively contribute to it.

IV. Addressing gaps and deficiencies in international tax cooperation

A. Gaps identified

16. The lack of a truly global all-inclusive norm-setting body for international tax cooperation at the intergovernmental level, which would offer developing countries a full "seat at the table", continues to constitute a fundamental gap in this area. The Committee currently plays a unique role in considering the policy and administrative aspects of international tax cooperation and in proposing solutions focused on needs and priorities of developing countries, which may, nevertheless, ultimately benefit all States Members of the United Nations. However, because of its non-governmental status and limited resources, the Committee does not fully address the above-mentioned gap. Owing to space limitations, the report does not consider dealing with this gap through conversion of the Committee of Experts into an intergovernmental commission. That option was covered in detail in the 2011 report of the Secretary-General, which still reflects the views taken on both sides of that debate.

17. The existing norm-setting arrangements for international tax cooperation do not provide for enough voice and participation for developing countries. The attention paid in the United Nations Model Tax Convention to the preservation of taxing rights of host countries for investment is a unique characteristic. The OECD Model Tax Convention has some similar elements, but they generally represent the minority position within that body and cannot be put forward with the same force as in a body where they represent the majority view. The United Nations Model and its work on transfer pricing also reflect a concern that the cost of undue complexity may be disproportionately borne by developing countries, especially those with weaker administrations. The Organization's work is therefore especially geared to identifying simpler, even if not perfect, solutions to major issues of concern in the area of international tax cooperation. This includes the possibility of transitional solutions in inherently complex areas of transfer pricing.

18. A related gap is the lack of sufficient participation by the least developed countries in international tax cooperation forums. The Committee has very limited representation from such countries, resulting, most directly, from the lack of nominations from their Governments. This might be related to the lack of funding for participation in the ongoing work of the Committee other than funding to attend its annual five-day session. Another possible reason could be the perception that the

major areas of focus of the Committee's work, including tax treaties and transfer pricing, are not as critical for the least developed countries at their current level of development as more fundamental domestic tax policy and administration issues.

19. When considering capacity development work in international tax cooperation, the World Bank, in its input, emphasized gaps in tax technical assistance, research and knowledge management, which, according to the Bank, was the result of a lack of sharing of information and collaboration among partners. From the Bank's perspective the best solution was dialogue, both through multilateral forums and bilaterally, but, whatever forum was chosen, it was important to commit to it over the long run in view of the recent proliferation of meetings and groups that are started up but do not continue to meet.

20. The World Bank also noted that since needs evolved over time, there was no one institution that fulfilled all technical assistance needs in the tax area. It was therefore important for all relevant organizations to remain involved in building on their distinct areas of expertise. Each institution has its unique strengths and weaknesses and partnering with others allows each one to leverage those strengths and address weaknesses. As a practical step, the Bank suggested quarterly meetings, using teleconferencing or videoconferencing, among the main providers of technical assistance in the tax area to discuss their activities. Furthermore, the Inter-American Centre of Tax Administrations pointed out that the need to enhance cooperation applied not only to projects requiring funding or the provision of technical support by international organizations, but also to the harmonization of the working methods of those organizations in order to allow them, inter alia, to carry out comparable studies for different regions and to provide assistance to countries in a coordinated way, using compatible methodologies.

21. Several deficiencies in the provision of technical assistance to developing countries in the area of international tax cooperation were also noted in the consultant's report, including insufficient donor coordination, which could result in the duplication of efforts or in the provision of conflicting policy advice to a country. Given various perspectives, it might be beneficial that a country be presented with several approaches or policy options. However, according to the consultant's report, it is questionable whether many developing countries have sufficient capacity to analyse different options and select the ones best suited to their own use. Another deficiency, according to the consultant's report, is insufficient monitoring and evaluation of the technical assistance received in order to obtain lessons learned for future activities. Some recipient countries do evaluate their technical assistance projects, but they are not often in a position to accurately benchmark their success or failure.

22. A more specific gap that is often acknowledged, including in the Report of the Group of 20, is insufficient provision of data to assist developing countries in setting policy and administering tax laws. This is partly the result of data-intensive international norms, for example the widely adopted norms in the area of transfer pricing, notably that of arm's length comparison, used in transfer pricing. Such norms are premised upon access to data that may be especially difficult for developing countries to obtain. As mentioned in the consultant's report, reliable data remains important not only for the collection of tax revenue but also for accurately calculating tax expenditure. A cooperative approach among international

organizations to help address these data gaps, including by developing and internalizing skills to interpret such data, is needed.

23. In its response, the African Tax Administration Forum, while focusing on the African region, highlighted the lack of necessary skills in many African tax administrations to adequately deal with tax avoidance and evasion, especially in view of the complexity of international business transactions. These tax administrations also face challenges in promoting transparent business practices and accounting methods, the sharing of tax information and cooperation with other States in effectively implementing tax treaties and agreements. The Forum believes that an improved exchange of information among its members through its working groups on the exchange of information and on transfer pricing would contribute to resolving this issue.

24. The consultant's report identifies some additional gaps affecting tax administrations, especially in developing countries, where enhanced international cooperation in the provision of technical assistance is needed. Many tax administrations lack the capacity to conduct implementation tests for new legislation in order to determine whether such legislation is workable. Through the use of such tests, tax authorities would be able to amend legislation, allocate more time for required training and adjustments, or even to completely withdraw the legislation. Another gap is the lack of capacity in developing countries to incorporate provisions in their double-taxation treaties for assistance in collecting taxes. Given that including such provisions would be in the interest of developing countries, international organizations could consider providing more technical assistance in the development of a legal framework and the training of staff in this area.

25. In addition, according to the consultant's report, officials in many tax administrations lack sufficient information to execute necessary tasks, including essential information such as domestic tax laws, related secondary legislation, guidelines and case law, as well as information on the international context, such as tax treaties and relevant literature for the application and interpretation of tax regulations. Such a lack of information puts the tax authority in a disadvantageous position vis-à-vis the taxpayer.

26. Another gap noted in the consultant's report is the fact that an independent and competent judicial system outside the tax administration, to which taxpayers can submit appeals, is frequently absent. An independent judicial system is essential for the proper administration of a tax system as it assures citizens that the system is fair and equitable and also fulfils the requirement of the business sector for a predictable and stable tax environment. In the international community, there is a relative lack of engagement with national tax courts and tribunals, and oftentimes there is resistance to a greater or more formalized engagement between these bodies in different countries in the world. A great deal of technical assistance is being provided to countries for improving the effectiveness of their judiciary in general, but surprisingly little assistance is devoted to the development of national tax courts, considering their valuable role from the perspective of all stakeholders in the tax system. Therefore, more technical assistance should be provided to developing countries in setting up an independent court system for tax appeals and for training judges in understanding and applying important principles of taxation. There should also be more efforts to share experience in this area.

27. Finally, there are important efforts under way to improve South-South cooperation in the area of taxation, including the South-South Sharing of Successful Tax Practices[10] project undertaken by the Department of Economic and Social Affairs in cooperation with the United Nations Development Programme and others. However, often, as in the case of the South-South project, lack of funding has prevented such initiatives from achieving their goals. There remains a distinct gap in this area, especially on an interregional basis, and more cooperative work in this area could prove to be part of the solution.

B. Possible roles for the United Nations in addressing the gaps

28. The entities consulted in the preparation of the present report attach great importance to effective cooperation among all the international organizations active in the area of international taxation, consistent with their differing memberships, mandates and comparative advantages. They are also of the view that the universal membership of the United Nations and its established expertise in the area of international taxation make it well-placed, through the Committee, to continue making a distinct and important contribution in that area, including helping to address some of the gaps identified above.

29. OECD expressed the view that the United Nations was in a unique position to bring to the table the views of developing countries, in particular the least developed countries, and that it should focus its work on the needs and specificities of those countries so that their views may be fully taken into consideration in the international tax debate. It also noted that the debate on tax and development greatly benefited from the input of the United Nations. Governments need to put in place tax systems and tax administrations that are adapted to their purposes and that contribute to the development of their countries, notably by facilitating international trade and investment through the prevention of double taxation. OECD observed that this required the implementation of a coherent international tax framework that could be tailored to the needs of countries at different stages of development.

30. While technical assistance to least developed countries in the area of taxation administration is often provided bilaterally by other countries or organizations, efforts should be made to ensure that the work of the Committee is as relevant as possible to those countries, that the activities under the regular programme of technical cooperation on tax cooperation[11] include a significant least developed country component, and that the least developed countries are encouraged to nominate candidates for the upcoming membership of the Committee, which is to be selected in 2013.

31. The African Tax Administration Forum noted the important role of the Committee as the only body in the United Nations system that focused on tools to assist countries in developing "home-grown" solutions to mobilize their domestic resources, leading to a reduction in their dependence on donor assistance. Given the

[10] See www.s4tp.org.

[11] The Department of Economic and Social Affairs recently developed its strategy on capacity development in the tax area, which will rely on limited funds from the regular programme of technical cooperation and the Development Account. This could be considered as seed funding but more resources are needed to support the work of the Committee to carry out its mandate in this area.

broad membership of the United Nations, the Forum believed that, the Committee should be used as a platform to further debates on tax cooperation and development at an international level while involving key players in the field from both developed and developing countries, as well as other international organizations. The importance of the Committee should be emphasized, by increasing its resources and reach so that it can partake in collaborations with the Forum and other regional tax groupings on technical assistance programmes and initiatives. While commenting on its role in promoting and supporting strengthened tax administrations as a means of mobilizing domestic resources for development in the African region, the Forum noted that the Committee could play a significant role in aligning programmes for developing countries with Forum initiatives so as to avoid duplication.

32. The consultant's report also noted several areas where the Committee and the secretariat could play a role in addressing current gaps. The Committee could play a role vis-à-vis technical assistance provided by other parties by providing a platform for discussing all relevant aspects of technical assistance at a global level. Given that various donors may be providing technical assistance simultaneously to the same country, it is possible that the country receiving technical assistance is being confronted with conflicting advice. The Committee can play a role in helping the country decide on the best solution, given its needs and stage of development. The Committee is well-placed to perform this task as its membership comprises representatives of both providers and recipients of technical assistance in the tax area. Furthermore, owing to its global presence, the United Nations is uniquely suited to play an important role in donor coordination with a view to avoiding duplication of efforts and conflicting advice as described above. To carry out this task, the United Nations would need to attend meetings of groups of regional tax authorities as an observer.

33. In order to improve the impact of technical assistance in developing countries, it is important to monitor and evaluate the effects of the implementation of specific projects. According to the consultant's report, the Committee could play an important role in this regard. It could assist in identifying successful technical assistance projects, which, with certain adjustments to the local circumstances, could also be carried out in other developing countries. In addition, the United Nations could play an important role in developing a basic tax training curriculum and in drafting training materials to train tax administrators in developing countries. Guidance could also be provided on how to set up a tax academy and organize training for tax administrators in those countries.

34. More specifically, the consultant's report notes that, building on its comparative advantage as custodians of the United Nations Model Tax Convention and the Manual for the Negotiation of Bilateral Tax Treaties between Developing and Developed Countries, the United Nations is well-placed to provide more assistance in capacity-building in the area of tax treaty negotiation and application, specifically in developing a tax treaty policy. For example, it could organize training courses and workshops in tax treaty negotiations, in collaboration with OECD or other partners, including the International Bureau of Fiscal Documentation. Similarly, the work of the Organization on the Practical Manual on Transfer Pricing is extremely useful, but it should be complemented by capacity development activities, enabling developing countries to deal effectively with transfer pricing

issues. This may involve assistance in setting up domestic law transfer pricing rules, as well as training tax officials to deal with transfer pricing issues and disputes.

C. Strengthening the work of the Committee

35. The Committee's terms of reference, membership, composition and term of office, frequency of meetings and reporting procedure, as well as its methods of work, are outlined in the 2011 report of the Secretary-General and will not be repeated here.

36. A review of the current working methods of the Committee was conducted by the secretariat, taking into account the views of Committee members, with a view to analysing strengths and weaknesses in the current working methods of the Committee and to providing recommendations on how to further enhance those strengths and effectively address the weaknesses. Two scenarios were considered: (a) no new resources are available, and (b) additional resources are available.

1. Perceived strengths in the working methods of the Committee

37. Most Committee members who responded to the questionnaire considered the role and mandate of the Committee to be sufficiently clear and broad, and were of the view that the work programme of the Committee in the recent past had appropriately addressed the Committee's mandate, particularly in considering the priorities and concerns of developing countries.

38. All members agreed that focusing on the update of the United Nations Model Tax Convention was the right priority over the last couple of years, as this was of critical importance and practical value for treaty negotiators, especially those from developing countries. Nevertheless, some considered that revising the United Nations Model Convention has consumed a large part of the Committee's time, leaving little time to address other issues.

39. The reliance on subcommittees and similarly constituted working groups as the main modality for carrying out the Committee's work is seen as a major strength in the working methods of the Committee. Subcommittees and working groups are made up of Committee members and observers from Governments, academia, the business sector, civil society and international organizations with special expertise in the relevant area. The expertise and willingness of members of the subcommittees to work pro bono and to arrange their own funding are one of the most valuable resources currently available to the Committee.

40. Having all preparatory work done within subcommittees, coordinated by a member of the Committee, with the participation of observers representing different constituencies and opinions, is seen as an efficient way to advance the Committee's mandate. Provided that the composition of a subcommittee is sufficiently diverse to fully reflect differences of opinions on a subject, the coordinator's job should be to arrive at a consensus on the issue at the level of the subcommittee, or to explain where there are divergent views that cannot be reconciled. Such work should result in preparation of a position paper that could be endorsed by the Committee without lengthy discussion during its annual session.

41. In practice, the Committee has relied heavily on its subcommittees, especially in relation to updating the United Nations Model Tax Convention, the revision of

the Manual for the Negotiation of Bilateral Tax Treaties between Developing and Developed Countries, the drafting of the Practical Manual on Transfer Pricing, as well as in its work in other areas. Most Committee members agreed that, given the limited resources, the subcommittees have been instrumental in driving work to completion, especially in priority areas, notably the 2011 update of the United Nations Model Tax Convention and transfer pricing. As they fulfil their mandates, the subcommittees and working groups are dissolved. The full list of subcommittees and working groups and information about their mandates and programme of work is available from the Committee website.[12]

42. Transparency and inclusiveness in the Committee's work is also seen as a strength of its working methods. The Committee has opened its sessions to observers in order to ensure transparency and show its willingness to seek out inputs and perspectives from beyond its membership. Observers include representatives of Member States, including those not represented on the Committee, as well as of the business sector, civil society, international and regional institutions and networks, local communities and the relevant United Nations agencies, funds and programmes. Observers have been actively contributing to the Committee's work not only during its annual sessions but also through the work of the subcommittees. Many Committee members highly value their contributions and are of the view that they add extra legitimacy to the Committee's outputs.

43. The effort made to avoid duplication with other multilateral bodies, whenever possible, is also seen as a strength of the Committee's working methods. It is especially visible in its work on the 2011 update of the United Nations Model Tax Convention. The Model Tax Convention draws upon the OECD Model Tax Convention by adopting its language whenever consistent with the perceived interests of developing countries, and focuses on explaining specific areas of divergence, which support the interests, aspirations and development priorities of developing countries in their treaties on double-taxation with developed countries.

44. Given the considerable expertise and the much larger resources of OECD in this and other areas of its work, the Committee, before undertaking any original work, examines what has already been done by OECD and in other forums with a view to avoiding unnecessary differences that could cause difficulties both for administrators and taxpayers. This is especially true regarding widely internationally agreed standards. Examples include the arm's length principle and international standards in the exchange of information. When working on the 2011 update of the United Nations Model Tax Convention, the Committee paid a great deal of attention to the adopted language to ensure that it did not unintentionally imply any disagreement with the international standards, which are widely adopted by developing countries.

45. Several members of the Committee are of the view that the expert status of the Committee and the fact that members participate in their personal capacity, as opposed to representing their respective Governments, is also a great strength. This allows the Committee to focus on practical tax matters rather than broader political debates. The fact that Committee members approach issues in their personal capacity rather than being bound by national or regional positions is seen by some members as giving them the necessary independence to compromise and find

[12] http://www.un.org/esa/ffd/tax/subcomm_wg.htm.

delicate consensus, which they feel would not be possible in a more politicized setting. In addition, if consensus cannot be reached, the Committee has the flexibility to accommodate a variety of approaches. An example is the United Nations Model Tax Convention, the commentaries on which can include several interpretations of any given provision reflecting differences in State practice.

2. Perceived weaknesses and deficiencies in the working methods of the Committee

46. An almost universal point made in relation to the Committee's working methods is that of inadequate resourcing. Lack of funding for the work of the subcommittees is a major challenge resulting in: (a) a limited number of face-to-face meetings; (b) underrepresentation of developing countries on the subcommittees; (c) insufficient participation of Committee members in subcommittee meetings; (d) what is sometimes perceived as a disproportionate representation of the business sector on certain subcommittees, especially in attendance of meetings; and (e) the inability of the secretariat to support such meetings, and to sufficiently support the subcommittees with research, expert papers and drafting suggestions.

47. All Committee members who responded to the questionnaire agreed that face-to-face meetings were necessary in order for their work to be effective, reflecting a view that has often been put forward by the Committee. They felt that it was not possible to fulfil the mandates of the subcommittees using only electronic means as real progress was often contingent on face-to-face meetings where issues could be fully discussed and consensus reached. On average, each subcommittee and working group should meet at least once a year for two working days. Usually, the required frequency of meetings increases over time, for example when a subcommittee's work is more advanced and there are more intricate and controversial issues to be discussed. Because of the lack of resources, subcommittee members have had to fund their own participation or rely on financial support from their employers. This has resulted in only a fraction of the required meetings taking place and in frequent non-participation of experts from developing countries. This has negatively affected the pace of progress in the Committee's work.

48. A relevant example is the Subcommittee on Transfer Pricing. Its work is in its final stage and there is a profound need for face-to-face meetings in order to discuss draft chapters of the Practical Manual on Transfer Pricing. The Subcommittee held one meeting in 2010, two meetings in 2011 and is to hold two meetings in 2012 in the run-up to the completion of the Manual at the Committee's annual session in October 2012.

49. Most of the Committee members are of the view that inadequate representation and/or non-participation of developing countries in the work of the subcommittees limits their contribution to the work of the Committee. If developing countries do not participate in subcommittee meetings, because they are not members or are not able to fund their travel costs, the outcomes of such meetings are less likely to represent a true consensus and the issues may be reopened at the annual session of the Committee, which would slow down its work.

50. Most members are of the view that the limited presence of developing countries in the work of subcommittees is due to lack of funding. In addition, a related observation has been made that, owing to the fact that members of subcommittees work pro bono and are required to fund their own travel, this work attracts people with more financial means. This not only results in a representational

imbalance between developing and developed countries, but also in a disproportionate number of participants from the business sector being represented on certain subcommittees. Efforts are being made to address such imbalances, including through coordinators actively seeking balanced views, meeting whenever possible in developing countries and encouraging the participation of developing countries at expert group meetings for which some financial support for attendance may be possible. There are, nevertheless, systemic risks to the integrity of some of the work of the Committee and to achieving its objectives unless more thoroughgoing support of the subcommittee system is provided.

51. Most Committee members, while expressing satisfaction with secretariat support provided from within current resources, feel that it is grossly inadequate given the scope of work. In particular, many feel that too much responsibility needs to be left with the subcommittees in keeping track of progress of their work and preparing drafts. They are also of the view that the work of the subcommittees and the Committee would benefit from more analytical and drafting support to prepare background papers for discussion.

52. The call for more secretariat support is even more understandable in view of the growing workload of the Committee owing to factors such as increased interest in, and scrutiny of, international tax cooperation issues, calls for more frequent updates to the United Nations Model Tax Convention and a suitably ambitious Committee work agenda in accordance with its mandate. Increased cooperation with other agencies, briefings and required documents, including recent reports of the Secretary-General on these issues mandated by the Economic and Social Council, has, however, further reduced the resources available on the part of the secretariat to support the core work of the Committee and the subcommittees.

53. For some Committee members it is a challenge to find the time to fully participate in its activities in view of their extensive professional responsibilities in their own countries. Some members also felt that, regardless of the work of the subcommittees, the annual meeting once a year for five working days does not provide sufficient time to make significant progress in implementing the Committee's broad mandate.

54. There are also challenges for the Committee's work in the area of capacity development. In order to implement the capacity development aspect of its mandate, as contained in Economic and Social Council resolution 2004/69, the Committee decided to form a Subcommittee on Capacity Development. Despite the lack of resources, the Subcommittee has been active in targeted assistance to developing countries, especially in making training materials available, and in promoting cooperation between developing countries on tax issues. It could however contribute more to fulfilment of the mandate of the Committee should more resources be made available to support its work.

55. The relationship of the Committee with the intergovernmental process, namely the Economic and Social Council, is weak. The reason is partly the timing and the venue of the annual session of the Committee of Experts. The Committee meets in Geneva during the main part of the General Assembly, which makes it impossible for most representatives to the Council to actively participate in its deliberations. Moreover, at the substantive session of the Council, the Committee's annual report tends to be considered in passing along with other unrelated reports, with no practical room for detailed discussions and with little opportunity to consider

proposed international instruments, including the proposed United Nations code of conduct on cooperation in combating international tax evasion, which the Committee attached to its report on its fifth session[13] and requested the Council to consider. A stronger relationship between the Committee and the Council would give more authority to the Committee's outputs, including the United Nations Model Tax Convention, the Manual for the Negotiation of Bilateral Tax Treaties between Developing and Developed Countries and the forthcoming Practical Manual on Transfer Pricing.

3. Strengthening work of the Committee under a scenario of "no new resources are available"

56. Most Committee members who responded to the questionnaire were not able to make any suggestions on how to increase the effectiveness of the work of the Committee if no new resources are made available. They expressed the view that the majority of members and the staff of the secretariat are working at full capacity. However, a few suggestions regarding refinement of current working methods and improving their implementation were made.

57. One suggestion was to improve time management when preparing background papers and drafts for the annual sessions of the Committee with a view of having them ready two months before the session in order to allow the members and others sufficient time to study them. Most background papers are prepared by subcommittees, and it is the experience of the secretariat that such a deadline would be difficult to achieve, especially as the work is done pro bono and members tend to be very busy with their day-to-day work. More ability to commission papers from experts on key issues might be of assistance, however, if resources become available.

58. It was also suggested that the Committee could further improve discipline during its annual sessions by making a greater effort to keep its discussion at the level of principle and policy, leaving more detailed work to the subcommittees, and to apply more consistently the rules and procedures agreed on for guiding the work process at the annual session. It must be pointed out, however, that an issue deemed by some members a detail, for others might be of critical legal importance requiring close discussion.

59. While recognizing the limitation of use of electronic means for the work of subcommittees, in the absence of additional resources, a suggestion was made to explore the possibility of utilizing teleconferencing or videoconferencing facilities. This could be explored further, including the idea of holding more frequent and shorter meetings. However, achieving an effective teleconference or videoconference facility for two or three days (the usual length of a subcommittee meeting) would probably not be feasible without additional resources.

4. Strengthening work of the Committee under a scenario of "new resources are available"

60. Almost all Committee members who responded to the questionnaire agreed that the most urgent deficit to be addressed, should additional resources become available, is strengthening the capacity of the secretariat to support the work of the

[13] E/2009/45, annex.

Committee and its subcommittees. Specifically, the need for more assistance in two areas is mentioned: (a) preparation of research and background papers on technical issues for consideration by the subcommittees and the Committee; and (b) provision of secretariat support to the subcommittees, by tracking progress of their work, managing and editing drafts and providing support to their meetings. This would be achieved by increasing staff and non-staff resources of the secretariat.

61. When discussing the need for more research support, most Committee members seemed to prefer in-house research as more impartial. They are of the view that having this work done by the secretariat would ensure that such drafts are based on adequate research, which creates the foundation for a balanced product. Others are of the view that some of the additional resources could be also used to commission studies from independent experts. This had been the case recently, and the outcome was regarded as a success, although it has relied on the goodwill of experts who had received less than market rates for tax-related advice.

62. In view of the difficulties in ensuring sufficient representation from developing countries on the subcommittees, it was asked whether, at least, the participation of experts from developing countries should be funded from the additional resources in order to avoid their non-participation for financial reasons.

63. Most Committee members agreed that additional resources were also needed to improve cooperation and coordination with other international organizations active in the area of international tax cooperation at the secretariat level. It is recommended that the secretariat attend the meetings of these multilateral and regional organizations. A summary position paper on work being done by other multilateral organizations could be circulated periodically to Committee members and their representatives invited to share their views.

64. It was recognized that capacity-building work was critical to enabling developing countries to take advantage of the Committee's outputs, such as the 2011 update of the United Nations Model Tax Convention, the Manual for the Negotiation of Bilateral Tax Treaties between Developing and Developed Countries and the forthcoming Practical Manual on Transfer Pricing. The Committee is uniquely positioned to play an important role in such capacity development activities owing to its knowledge and ownership of the above-mentioned United Nations outputs but also because of the expertise and networks of its members.

65. Several members of the Committee were of the view that, should there be additional resources, the frequency or length of the sessions of the Committee should be increased. One member also suggested increasing the membership of the Committee in order to make it more representative.

D. Enhancing international cooperation

66. As noted in the report of the Group of 20, each organization is ultimately responsible to its own membership and, in meeting its mandate, it will inevitably have a distinct focus and its own priorities. It follows that efforts for greater cooperation between international and regional organizations in this area must be nuanced by the recognition that: (a) through greater cooperation each organization will be better able to meet its mandate and apply its special insights, experience and credibility to best benefit both developing and developed countries; and (b) seeking

to avoid unnecessary duplication of effort should not deprive developing countries of a choice between alternative views and approaches that allow them to select the options that best meet their development priorities. The compilation of the report of the Group of 20 was, in itself, an example of such cooperation. Future cooperative efforts should be focused on reducing unnecessary duplication. Nevertheless, it should be recognized that providing alternative perspectives and improving the capacity to choose from several alternatives is a legitimate need and does not represent a duplication.

67. One way of improving international cooperation is for relevant organizations to have more regular meetings, joint events and projects. This will help to ensure that differences in approach, while not eradicated, are considered and discussed. Such meetings would also play a role in reducing the differences between countries by ensuring that those differences are transparent and fully understood on all sides, and would help place focus on the sometimes neglected commonalities.

68. The cooperative experience in the preparation of the report of the Group of 20 and in other areas shows, however, that effective cooperation requires a significant commitment of resources, including, in some cases, the cost of participation in events or meetings in person. There is also an opportunity cost in terms of other work that is delayed or cannot be done. In view of the small size of the secretariat at present, however, any potential efficiency savings in cooperation would be absorbed by the resourcing needed to actively engage in the cooperative relationship and evaluate its progress. Given limited resources, it is particularly important that such cooperation should not be at the expense of core activities in supporting the Committee.

69. Commenting on its collaboration with the United Nations, in its response OECD expressed the hope that giving the United Nations a greater role in its tax work would also support the work of the United Nations and be an efficient way to strengthen collaboration as the result of more regular meetings and active engagement between the two organizations. Several concrete proposals were put on the table at meetings of the two secretariats, including the granting of observer status to the United Nations Secretariat by the Committee on Fiscal Affairs, pending the approval by the OECD Council, and inviting the United Nations to take part in OECD workshops for its member and non-member countries under its Global Relations programme. The United Nations, for its part, suggested holding a joint United Nations-OECD capacity-building event, for example with the African Tax Administration Forum, on the practical application of tax treaties or transfer pricing. The programme of such event would be based on both the United Nations Model Tax Convention and the OECD Model Tax Convention. The United Nations also suggested organizing a joint meeting to hold an open and practical discussion, for the benefit of developing countries, of the differences and complementarities between the United Nations and the OECD Model Conventions in order to assist those countries in making the most informed choices when negotiating and implementing their treaties.

70. In their inputs, the World Bank, IMF and OECD all supported the International Tax Dialogue as a suitable framework for general collaboration among the international organizations. The United Nations is not currently a member of the Dialogue but an invitation to join would be seriously considered, subject to any costs involved in participating actively, constructively and effectively.

V. Conclusions

71. **The universal membership in the United Nations, as well as its history and expertise in the area of international taxation, make it well-placed to continue, through the Committee of Experts on International Cooperation Tax Matters, to make a distinctive, practical and enduring contribution to improving international tax cooperation, which is increasingly understood as a key path to sustainable development. The distinct and unique role of the Committee is well accepted. Likewise, the existing working methods of the Committee are appreciated by the international community as a generally efficient way of meeting its mandate to the greatest extent possible, from within current resources. While there is inevitably room for the improvement of its methods, there is widespread agreement among the Committee members and more broadly that additional resources are urgently needed to support its work and to enable it to meet its mandate. These increased resources are necessary, inter alia, to strengthen the secretariat's capacity to support the work of the Committee and its subcommittees and to ensure that the subcommittees are sufficiently balanced, representative and able to meet their specific mandates to the satisfaction of the Committee and United Nations Member States.**

72. **While each country is responsible for its own tax system, the United Nations, thanks to its universal membership and its legitimacy, can be a catalyst for increased international cooperation in tax matters for the benefit of developed and developing countries alike. Since the great majority of United Nations Member States are not members of either OECD or the Group of 20, it is the role of the United Nations to ensure the active participation of developing countries, including the least developed countries, in international tax cooperation activities, which will ultimately be of benefit to them. Only if this level playing field is achieved, can enhanced tax cooperation be truly respected as global. At present, there appears to be a moment in time when the proper application of resources could bring that goal within reach.**

73. **To that end, the United Nations tax work should be focused on providing a leadership role in areas where there are gaps, including in terms of the voice and participation of developing countries, which the Organization is uniquely placed to address. Such a leadership role would best be achieved by working cooperatively with others, recognizing their distinct roles and the relationship between those roles and that of the United Nations. Joint events and more regular, focused and practical meetings with other organizations are an essential part of this cooperative mix. Such improved cooperation will also require additional funding if it is to be sustainable and, if the moment is not to be lost, the Economic and Social Council may wish to consider ways of helping ensure that the Committee's needs for additional resources are met, including through urging Member States to contribute to the Trust Fund for International Cooperation in Tax Matters.**